



ILLINOIS COMMERCE COMMISSION

April 11, 2002

Norfolk Southern Railway Company,
Petitioner,

v.

City of Jacksonville, Illinois, Illinois Department of Transportation, and
the Burlington Northern and Santa Fe Railway Company,
Respondents.

T01-0070

Petition to permit closing of an existing at-grade crossing in the City of Jacksonville, Morgan County, Illinois To-Wit: Brown Street (MP 447.47WC; DOT 479 403P) and to consider improvements at Johnson Street (MP 446.86WC; DOT 479 401B); Howe Street (MP 447.15WC; DOT 479 402H); East Street (MP 447.73WC; DOT 479 405D); Prairie Street (MP 448.30WC; DOT 479 410A); Diamond Street (MP 448.40WC; DOT 479 411G); Caldwell Street (MP 448.73WC; DOT 479 413V); Sandusky Street (MP 448.89WC; DOT 479 414C); Webster Street (MP 449.05WC; DOT 479 416R).

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

Entered:

Joseph H. O'Brien
Joseph H. O'Brien
Administrative Law Judge
Review & Examination Program

JHO'B:rsc
Railroad Staff: Mr. Berry

DOCKETED

STATE OF ILLINOIS

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Webster Street (MP 449.05WC; DOT 479 416R).

ORDER

By the Commission:

On December 4, 2001, the Norfolk Southern Railway Company ("NS") filed its Petition with the Illinois Commerce Commission ("Commission") naming therein the City of Jacksonville ("City"), Morgan County, the Burlington Northern and Santa Fe Railway Company ("BNSF"), and the Illinois Department of Transportation ("IDOT") as Respondents.) The NS requests the improvement of the Johnson Street (MP 446.86WC; DOT 479 401B); Howe Street (MP 447.15WC; DOT 479 402H); East Street (MP 447.73WC; DOT 479 405D); Prairie Street (MP 448.30WC; DOT 479 410A); Diamond Street (MP 448.40WC; DOT 479 411G); Caldwell Street (MP 448.73WC; DOT 479 413V); Sandusky Street (MP 448.89WC; DOT 479 414C); Webster Street (MP 449.05WC; DOT 479 416R) crossings by the installation of automatic flashing light signals and gates controlled by constant warning time circuitry in the City. The Petition further requested the Commission require the Brown Street crossing (MP 447.47WC, DOT 479 403P) closed, abolished, and barricaded to vehicular traffic. The NS request that the cost for the aforementioned improvements be divided between the Grade Crossing Protection Fund and the NS.

Pursuant to notice and as required by Law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission on January 23, 2002, February 5, 2002, and April 9, 2002, at the Commission's offices in Springfield, Illinois. Counsel for the NS and a member of the Commission's Rail Safety Section staff were present at the January 23, 2002, and February 5, 2002, hearings. A representative of the Department was present and participated at the hearing on January 23, 2002. At the hearing on February 5, 2002, the City was represented by counsel. At the conclusion of the hearing on April 9, 2002, the matter was marked "Heard and Taken."

As required by Law, public notice of the proposed closure of the Brown Street crossing was published in the Jacksonville Journal-Courier on December 17, 2001, a newspaper of general circulation.

A mainline track of the NS extends in a general east-west direction through the City. Just east of the Brown Street crossing, the mainline track of the NS has a crossover with a mainline track of the BNSF. There are twelve NS (12) at-grade crossings within the City, a distance of approximately 2.2 miles. Three of the crossings are already equipped with automatic flashing light signals and gates. There are 18 freight trains per day on the mainline track at speeds that vary depending on the railroad milepost. Between milepost 447-448, the speed limit for westbound traffic is 30 mph. After milepost 448 and the past the BNSF crossover, the speed limit increases to 50 mph. Easterly, between milepost 448-447, the speed limit is 30 mph. Once past the BNSF crossover, the speed limit increases to 50 mph. There is no passenger train traffic on the NS mainline track.

The mainline track of the NS cross Johnson Street, Howe Street, Brown Street, East Street, Prairie Street, Diamond Street, Caldwell Street, Sandusky Street, and Webster Street at an approximate 90° angle. The average daily traffic in the vicinity of the crossings are: Johnson Street-850; Howe Street-1,100; BrownStreet-809 (estimated average daily traffic count); East Street-1,000; Prairie Street-1,800; Diamond Street-1,350; Caldwell Street-950; Sandusky Street-1,600; and, Webster Street-1,600. All crossing are currently equipped with automatic flashing light signal.

After review of the evidence in this record, all parties agree that the Johnson Street, Howe Street, East Street, Prairie Street, Diamond Street, Caldwell Street, Sandusky Street, and Webster Street crossings be equipped with automatic flashing light signals and gates controlled by constant warning time circuitry (Petitioner's Group Exhibit No. 5). The cost for the installation of the warning devices is to be divided 90% in an amount not to exceed \$1,131,750, with all remaining installation cost and all cost to operate and maintain the warning devices being borne by the NS.

The only point of contention between the parties is the request from NS for Commission approval to close, abolish, and barricade the Brown Street crossing. This disagreement arises from the fact that several hundred feet north of the NS main line track proposed for closure, a y-track extends through Brown Street connecting the NS mainline track with the mainline track of the ("BNSF"). Train traffic on this y-track, which is used to transfer rail cars between the two railroads, amounts to an average of two trains per week at a maximum speed of less than 10 mph. The numbers of rail cars transferred vary from train to train, but usually range from between 1 to 5 cars at a time. Depending upon conflicting testimony of the parties, there are from 3-5 residences located between the NS main line track and the y-track. Staff's Recommendation, with concurrence of the NS, made the following arguments for the closure of the Brown Street crossing:

- the NS and BNSF have both issued bulletins to their train crews not to block the y-track crossing (Petitioner's Exhibit No. 8 and 10);
- train crews have been ordered not to park any rail cars within 100' of the crossing (Petitioner's Exhibit No. 9); and,
- both railroads now require a member of the train crew to flag all train movements over the y-track crossing.
- the length of trains are so short that the amount of time a train occupies the crossing is very minimal;
- there is no other NS track in the State of Illinois with this density of rail/highway crossings; this density of crossings results in a high exposure factor between vehicles and trains; the higher the exposure factor, the greater the chance for a collision between a car and a vehicle;
- no evidence was presented by the City documenting any problems or complaints concerning the y-track crossing being occupied by a train for such a period of time that it caused an access problem for fire, police, or other emergency vehicles; and,
- from evidence presented by the NS, there is an access road that allowed the aforementioned residences emergency access into and out of the area between the NS main line track and the y-track; this roadway was labeled "dog path" road which is still in existence.
- The trains operate so infrequently over the y-track crossing at Brown Street that the crossing will only be blocked, under normal circumstances, when occupied by a moving train.

The City is of the opinion that if the NS main line crossing with Brown Street is closed to vehicular traffic, and a train is occupying the y-track, emergency vehicles cannot gain access to the residences located between the two tracks. The only other way for the possible blockage of the Brown Street y-track crossing is by a derailment over the crossing. This is a powerful argument. If a train derails over the Brown Street y-track crossing, the area and residences between the NS y-track and NS mainline track would be shut off from access by emergency vehicles. The NS in one of its arguments provided a newspaper article that shows a map of the area and of an alleyway named "Dog Path" that parallels the NS tracks easterly then adjoins private property. While this could be used as an ingress/egress from the area, the owner of the property in questions has blocked the alleyway for use by vehicular traffic. The Commission has no jurisdiction over private property. The Commission's mandate is to provide for the public safety at highway-rail crossings and in the opinion of the Administrative Law Judge, the closure of the Brown Street crossing which could result in the isolation of the residents located between the two NS tracks in the case of a derailment on the y-track outweighs any benefits for the closure of the Brown Street crossing. The Brown Street crossing should therefore remain open to vehicular traffic.

An Administrative Law Judge's Proposed Order was served on the parties and any responses thereto were considered herein.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) the recitals of fact as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- 3) the crossings of Johnson Street; Howe Street; Brown Street, East Street; Prairie Street; Diamond Street; Caldwell Street; Sandusky Street; and Webster Street should be improved by the installation of automatic flashing light signals and gates controlled by constant warning time circuitry;
- 4) the cost for the aforementioned improvements should be divided between the parties and the Grade Crossing Protection Fund ("Fund") according to Law;
- 5) the Fund, City of Jacksonville, and the NS should bear their respective portions of the proposed improvements as set forth in the following manner:

Improvement	Estimated Cost	GCPF	NS	City
Install automatic flashing light signals and gates at the Johnson Street, Howe Street, East Street, Prairie Street, Diamond Street, Caldwell Street, Sandusky Street, Webster Street, and Brown Street.	Johnson Street- \$155,000 Howe Street- \$184,200 East Street- \$148,500 Prairie Street- \$143,700 Diamond Street- \$184,800 Caldwell Street- \$182,600 Sandusky Street- \$135,200 Webster Street- \$123,500 Brown Street- \$184,200	90% in an amount not to exceed \$1,297,530 for all nine crossings.	Remaining cost at all crossings except Brown Street.	10% at Brown Street or \$18,420
Total	\$1,441,700	\$1,297,530	\$125,750	\$18,420

the amount to be paid by the Fund toward the warning device installations at the nine aforementioned NS crossings should not exceed \$1,297,530; the amount to be paid by the City should not exceed \$18,420 for the warning device installation at Brown Street; all remaining installation cost after payment from the Fund and City and all cost of future maintenance and operation of the warning devices at all nine crossings is to be borne by the NS.

- 6) the improvements should be completed by the NS within eighteen (18) months of the date of this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Norfolk Southern Railway Company be, and it is hereby, required and directed to install and thereafter maintain a system of automatic flashing light signals and gates controlled by constant warning time circuitry at the Johnson Street; Howe Street; Brown Street, East Street; Prairie Street; Diamond Street; Caldwell Street; Sandusky Street; and Webster Street crossings in the City of Jacksonville.

IT IS FURTHER ORDERED that the aforementioned warning device improvements shall be completed within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the cost for the warning device installations be divided between the Grade Crossing Protection Fund, the Norfolk Southern Railway company, and the City of Jacksonville in the manner as described in Finding (5) herein.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Mr. Hank Cronister, Bureau of Local Roads and Streets, Main Office of the Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, IL 62764. The final bill shall be clearly marked "Final Bill." Authorization for reimbursement from the Grade Crossing Protection Fund shall expire and the Department shall de-obligate all residual monies from the Grade Crossing Protection Fund twelve (12) months after the completion date specified in this Order.

IT IS FURTHER ORDERED that the Norfolk Southern Railroad Company shall within one hundred twenty (120) days from the date of this Order furnish to the Illinois Department of Transportation for its approval, two copies of the general layout plans applying to the installation of the automatic flashing light signals and gates.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid plans and cost estimates, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed for each crossing in accordance with Form 3 of 92 I.A.C. 1535.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company file Form 3's of I.A.C. 1535 of this Commission showing details of the automatic warning device installations herein required at the nine aforementioned crossings and shall receive approval thereof by X-Resolution before commencing the installations.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the progress it has made toward the completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in this Order, crossing information (inventory number and railroad milepost) type of improvement, and project manager information (the name, title, mailing address, telephone number, and facsimile number of the railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that the Norfolk Southern Railroad Company shall at six (6) months intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the status of expenditures of the total project and percentage of completion of the project. If the project is behind schedule, the report must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five days of the completion of the work herein required of it, National Inventory Update Report Forms for each crossing as notice of said completions.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this day of , 2002.

Chairman